

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**U.S. Bancorp,** a Delaware  
Corporation; and Does 1-10,  
Defendants.

**Case No. '14CV1460 H DHB**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants U.S. Bancorp, a Delaware Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the State of California.

1       2. Defendant U.S. Bancorp owns and operates the US Bank (“Bank”), as  
2 well as owns the property, located at or about 770 Carlsbad Village Drive,  
3 Carlsbad, California, now and did so in December 2012.

4       3. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained  
7 of, and alleges a joint venture and common enterprise by all such  
8 Defendants. Plaintiff is informed and believes that each of the Defendants  
9 herein, including Does 1 through 10, inclusive, is responsible in some  
10 capacity for the events herein alleged, or is a necessary party for obtaining  
11 appropriate relief. Plaintiff will seek leave to amend when the true names,  
12 capacities, connections, and responsibilities of the Defendants and Does 1  
13 through 10, inclusive, are ascertained.

14  
15       **JURISDICTION & VENUE:**

16       4. This Court has subject matter jurisdiction over this action pursuant to  
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
18 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19       5. Pursuant to pendant jurisdiction, an attendant and related cause of  
20 action, arising from the same nucleus of operative facts and arising out of  
21 the same transactions, is also brought under California’s Unruh Civil Rights  
22 Act, and the California Disabled Persons Act, which acts expressly  
23 incorporate the Americans with Disabilities Act.

24       6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
25 founded on the fact that the real property which is the subject of this action  
26 is located in this district and that Plaintiff’s cause of action arose in this  
27 district.

**FACTUAL ALLEGATIONS:**

7. The Plaintiff went to the Bank in December 2012, to make a deposit.

8. The Bank is a facility open to the public, a place of public accommodation, and a business establishment.

9. Parking spaces are one of the facilities, privileges and advantages offered by defendants to their customers at the Bank.

10. Unfortunately, there are no van-accessible parking spaces available for disabled customers at the Bank, even though parking is provided in the parking lot for ambulatory customers. In fact, there is no access aisle attached to the only parking space that could be reserved for disabled persons.

11. Plaintiff believes that a van-accessible parking space once existed at this location, however. Unfortunately, the defendants have allowed the access aisle to fade or allowed it to be paved over. Defendants have no policy or procedure to maintain the parking lot, though, so that the parking spaces remain useable by disabled persons.

12. There is also no pole-mounted signage that accompanies the parking space.

13. The plaintiff personally encountered this problem. This inaccessible condition denied the plaintiff full and equal access and caused him difficulty.

14. Plaintiff would like to return and patronize the Bank but will be deterred from visiting until the defendants cure the violation.

15. Additionally, on information and belief, the plaintiff alleges that the failure to remove these barriers was intentional because: (1) these particular barriers are intuitive and obvious; (2) the defendants exercised control and dominion over the conditions at this location and, therefore, the lack of accessible facilities was not an "accident" because had the defendants intended any other configuration, they had the means and ability to make the

1 change.

2  
3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
4 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
5 all defendants (42 U.S.C. section 12101, et seq.)

6 16. Plaintiff repleads and incorporates by reference, as if fully set forth  
7 again herein, the allegations contained in all prior paragraphs of this  
8 complaint.

9 17. Under the ADA, it is an act of discrimination to fail to ensure that the  
10 privileges, advantages, accommodations, facilities, goods and services of  
11 any place of public accommodation is offered on a full and equal basis by  
12 anyone who owns, leases, or operates a place of public accommodation. See  
13 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 14 a. A failure to make reasonable modifications in policies, practices,  
15 or procedures, when such modifications are necessary to afford  
16 goods, services, facilities, privileges, advantages, or  
17 accommodations to individuals with disabilities, unless the  
18 accommodation would work a fundamental alteration of those  
19 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 20 b. A failure to remove architectural barriers where such removal is  
21 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
22 defined by reference to the ADAAG, found at 28 C.F.R., Part  
23 36, Appendix “D.”
- 24 c. A failure to make alterations in such a manner that, to the  
25 maximum extent feasible, the altered portions of the facility are  
26 readily accessible to and usable by individuals with disabilities,  
27 including individuals who use wheelchairs or to ensure that, to  
28 the maximum extent feasible, the path of travel to the altered

1 area and the bathrooms, telephones, and drinking fountains  
2 serving the altered area, are readily accessible to and usable by  
3 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

4 18. Any business that provides parking spaces must provide handicap  
5 parking spaces. 1991 Standards § 4.1.2(5). One in every eight of those  
6 handicap parking spaces but not less than one must be a “van” accessible  
7 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §  
8 4.1.2(5)(b).

9 19. Here, there was no van-accessible parking space available on the day  
10 of plaintiff’s visit because the parking space did not have an 8-foot access  
11 aisle. In fact, there was no access aisle whatsoever. The lack of an accessible  
12 parking space is a violation of the law.

13 20. The defendants have no policy or procedure to maintain their parking  
14 spaces so that they remain useable for disabled persons.

15 21. There was also no pole-mounted signage accompanying the parking  
16 space.

17 22. To qualify as a reserved handicap parking space, the space must be  
18 properly marked and designated. Under the ADA, the method and color of  
19 marking are to be addressed by State or local laws or regulations. See 36  
20 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to  
21 properly and effectively reserve a parking space for persons with disabilities,  
22 each such space must be identified with a reflectorized sign permanently  
23 posted adjacent to and visible from each stall or space. CBC § 1129B.4. The  
24 sign must consist of the International Symbol of Accessibility in white on a  
25 blue background. *Id.* It cannot be smaller than 70 square inches and must be  
26 mounted so that there is a minimum of 80 inches from the bottom of the sign  
27 to the parking space. *Id.* Signs must be posted so that they cannot be  
28 obscured by a vehicle parking in the space. *Id.* An additional sign or

1 additional language below the symbol of accessibility must state, “Minimum  
2 Fine \$250” to ensure that the space remains available for persons with  
3 disabilities. Id. Another sign must be posted in a conspicuous place at the  
4 entrance to the parking lot or immediately adjacent to each handicap parking  
5 space, with lettering 1 inch in height, that clearly and conspicuously warn  
6 that unauthorized vehicles parking in the handicap parking spaces can be  
7 towed at the owner’s expense. Id. Additionally, the surface of the handicap  
8 parking stall must have a profile view of a wheelchair occupant that is 36  
9 inches by 36 inches. Id. And the surface of the access aisle must have a blue  
10 border. CBC § 1129B.3. The words “NO PARKING” in letters at least a foot  
11 high must be painted on the access aisle. Id.

12  
13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**  
14 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)  
15 (Cal Civ § 51-53)

16 23. Plaintiff repleads and incorporates by reference, as if fully set forth  
17 again herein, the allegations contained in all prior paragraphs of this  
18 complaint.

19 24. Because the defendants violated the plaintiffs’ rights under the ADA,  
20 they also violated the Unruh Civil Rights Act and are liable for damages.  
21 (Civ. Code § 51(f), 52(a).)

22 25. Because the violation of the Unruh Civil Rights Act resulted in  
23 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
24 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
25 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
2 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
3 against all defendants) (Cal Civ. § 54-54.8)

4 26. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7 27. Because the defendants violated the plaintiff's rights under the ADA,  
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
9 Code § 54.1(d), 54.3(a).)

10 28. Because the violation of the Disabled Persons Act resulted in  
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
13 55.56(a)-(c).)

14  
15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
16 plaintiff and against all defendants)


17 29. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint.

20 30. The Defendants had a general duty and a duty arising under the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act and  
22 California Disabled Persons Act to provide safe, convenient, and accessible  
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
24 preceding paragraphs, has caused injury and damage as alleged above.

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

2. Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act which damages provide for actual damages and a statutory minimum of \$4,000. Note: a plaintiff cannot recover under both acts, simultaneously, and an election will be made prior to or at trial.

Dated: June 9, 2014      CENTER FOR DISABILITY ACCESS



Mark Potter, Esq.  
Attorneys for Plaintiff